

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

COHEN

Mailed: February 10, 2014

Opposition No. 91207899

PartyGaming IA Limited

v.

Yessenia Soffin

**Before Kuhlke, Cataldo, and Masiello,  
Administrative Trademark Judges.**

**By the Board:**

Yessenia Soffin ("applicant") seeks registration of the mark, PARTY STAR POKER, in standard characters, for "Gambling services; Providing a web-based system and on-line portal for customers to participate in on-line gaming, operation and coordination of game tournaments, leagues and tours" in International Class 41.<sup>1</sup>

On November 7, 2012, PartyGaming IA Limited ("opposer") filed a notice of opposition against applicant's application on the ground of likelihood of confusion.<sup>2</sup> In support of this ground, opposer relies on its alleged common law rights in PARTYPOKER and PARTYPOKER and design and Registration No. 2986410 for the mark  for

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<sup>1</sup> Application Serial No. 85571885 was filed March 16, 2012 pursuant to Trademark Act § 1(a), 15 U.S.C. § 1051(a), claiming a date of first use anywhere and in commerce of October 2011.

<sup>2</sup> Opposer included status and title copies of its pleaded registration as an attachment to its notice of opposition.

"Computer game software distributed via the Internet; and Electronic newsletters distributed via the Internet and electronic mail" in International Class 9, and "Arranging, organizing and conducting entertainment services in the form of online contests and games of chance" in International Class 41.<sup>3</sup>

Applicant's answer denied the salient allegations of the notice of opposition.

This case is now before the Board for consideration of opposer's combined motion for summary judgment and alternative motion to extend discovery and trial dates by sixty days, filed October 31, 2013. The motions are fully briefed.

Opposer's motion is predicated entirely upon its requests for admissions ("RFAs")<sup>4</sup> which opposer argues should be deemed admitted under Fed. R. Civ. P. 36(a)(3) because it alleges that it never received applicant's responses to opposer's first set of requests for admissions.<sup>5</sup> Opposer contends that, by virtue of applicant's deemed admissions, there are no genuine disputes of material fact

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<sup>3</sup> "Providing affiliate website services for others via the Internet" in International Class 42 in Registration No. 2986410 was deleted in plaintiff/registrant's Section 8 declaration of use.

<sup>4</sup> Opposer's first set of requests for admissions were attached as an exhibit to opposer's motion for summary judgment.

<sup>5</sup> Absent circumstances which would cast doubt on the statement, the Board takes at face value a party's assertion that it did not receive a paper. *Old Nutfield Brewing Co., v. Hudson Valley Brewing Co.*, 65 USPQ2d 1701, 1704 n.8 (TTAB 2002); *Jack Lenor Larsen, Inc. v. Chas. O. Larson, Co.*, 44 USPQ2d 1950, 1954 (TTAB 1997).

with respect to opposer's standing and its claim of priority and likelihood of confusion and that, as a consequence, opposer is entitled to judgment as a matter of law.

In its response, applicant argues that it timely served responses to the requests for admissions and therefore, the requests for admissions are not deemed admitted. Applicant's response is accompanied by its purported responses to the requests for admissions along with a certificate of service, addressed to opposer's counsel of record, dated July 18, 2013.

In view of applicant's arguments and because it has provided its responses to the requests for admissions, the Board construes applicant's filing as a combined response to the motion for summary judgment and, in the event that opposer's requests for admissions are deemed admitted, a motion to withdraw and amend the deemed admissions.

***Requests for Admissions***

In serving requests for admissions, a party asks its adversary to stipulate to certain matters as a means of reducing issues for trial. See TBMP § 407.02. Fed. R. Civ. P. 36(a)(3) provides that requests for admissions are deemed admitted unless written answers or objections thereto are served upon the requesting party within thirty days of service of the requests.

Where a party seeks to avoid admissions for a failure to respond, either in a timely manner or at all, it may pursue two separate avenues for relief, either independently or in the alternative. The

responding party may seek relief under Fed. R. Civ. P. 36(b) by moving to withdraw and amend its effective admission, or under Fed. R. Civ. P. 6(b)(1)(B), by showing why its failure to serve timely responses to the admission requests was a result of excusable neglect. See *Giersch v. Scripps Networks, Inc.*, 85 USPQ2d 1306, 1307 (TTAB 2007) and *Hobie Designs, Inc. v. Fred Hayman Beverly Hills, Inc.*, 14 USPQ2d 2064 at n.1 (TTAB 1990).

The Board may permit withdrawal or amendment of admissions "if it would promote the presentation of the merits of the action and if the [Board] is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits." Fed. R. Civ. P. 36(b). See also TBMP § 525. As contemplated under Rule 36(b), "'prejudice' is not simply that the party who initially obtained the admission will now have to convince the fact finder of its truth, but rather, relates to the special difficulties a party may face caused by the sudden need to obtain evidence upon withdrawal or amendment of admission." *Giersch*, 85 USPQ2d at 1308, quoting *Kerry Steel, Inc. v. Paragon Industries, Inc.*, 106 F.3d 147 (6th Cir. 1997). Indeed, in this case many of opposer's admission requests are conclusory in nature, and therefore, "do not advance the presentation of the case." *Hobie Designs Inc. v. Fred Hayman Beverly Hills Inc.*, 14 USPQ2d 2064, 2065 (TTAB 1990).

Although opposer would have to prove its case on the merits, proving one's case is not prejudice because it is no more than opposer would have been required to do anyway. Furthermore, we find that allowing withdrawal and amendment to applicant's responses to

opposer's requests for admissions would "promote the presentation of the merits of the action." Fed. R. Civ. P. 36(b).

In view thereof, to the extent opposer's requests for admission are deemed admitted, they stand withdrawn and applicant's responses attached to its motion are accepted.

**Summary Judgment**

Because opposer's motion for summary judgment is based entirely on applicant's now-withdrawn admissions, it will be given no further consideration.<sup>6</sup>

**Alternative Motion to Extend Discovery**

In its motion for summary judgment, opposer alternatively seeks an extension of dates by sixty days. Inasmuch as applicant, in its response, "consents to this request and alternative motion," the motion is hereby **GRANTED**. Proceedings are resumed. Dates are reset as follows:

Discovery Closes	4/15/2014
Plaintiff's Pretrial Disclosures	5/30/2014
Plaintiff's 30-day Trial Period Ends	7/14/2014
Defendant's Pretrial Disclosures	7/29/2014
Defendant's 30-day Trial Period Ends	9/12/2014
Plaintiff's Rebuttal Disclosures	9/27/2014
Plaintiff's 15-day Rebuttal Period Ends	10/27/2014

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule

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<sup>6</sup> The Board notes that consideration of opposer's motion for summary judgment would not have changed the Board's decision.

Opposition No. 91207899

2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129